Minutes of the 105th meeting of the Board of the EHRC

27 July 2022 (10:00-16:30)
Virtual

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Attending

Commissioners
Baroness Kishwer Falkner (Chairwoman); Caroline Waters (Deputy Chair); Akua Reindorf; Alasdair Henderson; David Goodhart; Eryl Besse; Helen Mahy; Jessica Butcher; Dr Lesley Sawers and Su-Mei Thompson.

Officers
Marcial Boo, Chief Executive Officer
Cath Denholm, Chief Operating Officer
Melanie Field, Chief Strategy and Policy Officer
Adam Sowerbutts, Chief Legal Officer (item 10)
Alasdair Macdonald, Director, Policy and Human Rights Monitoring (item 8)
Bill Malloy, Director, Planning, Performance and Governance (items 11-14)
Jacqueline Killeen, Director, Regulation
Luke Taylor, Director, Strategy, Evidence and Three Nations (items 9-10, 12-14)
Moya Alcock, Director, Communications (item 10)
Naomi Fawcitt, Principal, Private Office
Ruth Latusek, Senior Associate, Governance Lead
Sarah Whelan, Principal, Corporate Governance
Sian Hughes, Senior Principal, Head of Data and Evidence (item 9)

Guests
Brian Baverstock, On Board Training and Consultancy Ltd (item 11)
David Nicholl, On Board Training and Consultancy Ltd (item 11)
Olivia Ely, Government Equalities Office (GEO) (items 1 to 10)

1. Chairwoman's welcome and apologies

1.1 The Chairwoman welcomed attendees. There were no apologies.

2. Declarations of interest

2.1 There were no new declarations of interest. It was noted that Akua Reindorf would recuse herself from the discussion on a secure training centre as part of the CEO report.

3. Minutes of the 104th Board meeting (EHRC 105.01)

3.1 The Board approved the minutes of the meeting of 30 June as an accurate record, subject to the requested amendments to points 5.3, 5.4, 7.3.c, 5.5, 8.1.1.a, and 8.2.2.c.

4. Actions arising (EHRC 105.02)

4.1 The Board noted the action log.

4.2 The Chief Executive advised that, following a discussion with the Chairwoman, the cross-border implications of the Gender Recognition Act Reform in Scotland will be discussed at the next Board meeting on 14 September. Given the expected timescales of the Bill, there may also be an earlier, additional Board meeting or a discussion by correspondence.

4.3 The Chairwoman advised that Board discussions will need to be timely with Scotland and Wales. She noted there is no mandated chronology to consulting the Scotland and Wales Committees, but to ensure there is a mechanism for taking their views on board.

Action: Chief Strategy and Policy Officer to produce a draft Board paper on the Gender Recognition Act Reform in Scotland so that the Chairwoman can consider the approach to Board engagement.

Action: Executive team to ensure that the Scotland and Wales Commissioners are engaged in consulting their respective Committees.

4.4 The Chairwoman thanked Commissioners for attending the roundtable on race and ethnic disparities in Britain on 21 July. She advised that the presentation slides and a brief summary of the discussion will be shared with Commissioners. It was noted that the roundtable could have been longer than 2 hours, and invitations to the Scotland and Wales Committees sent sooner.

Action: Governance team to share the race roundtable presentation slides and the summary of the discussion with Commissioners and Committees members.

Action: Governance team to advise teams on planning Board roundtables, particularly on timings and engaging Committees.

5. Committee and Commissioner Working Group updates

5.1 The Chair of the Audit and Risk Assurance Committee (ARAC) advised that the Committee met on 19 July and discussed assurance processes, agreed the Internal Audit plan, approved the skills matrix for ARAC members and reviewed the risk report and the Government Functional Standards. She advised that ARAC was fully supportive of the Accounting Officer continuing to deliver the business plan and related expenditure, despite the Commission not having received financial delegation from the Cabinet Office. The Chief Executive reassured the Board that the Commission is making reasonable assumptions about the budget and that contingency plans are in place. The Chairwoman congratulated the Chair of ARAC on laying the Annual Report and Accounts before Parliament on 14 July.

5.2 The Chair of the People and Workspace Committee (P&WC) advised that, at the last Board meeting, she had noted that Commissioners Eryl Besse and Akua Reindorf would join the Committee, and their start date has now been confirmed as 1 September 2022. She also advised that, when her term ends

on 14 January 2023, there will remain a Commissioner who meets the relevant statutory requirement to be or have been disabled.

6. CEO Report & Chairwoman's update (EHRC 105.03)

6.1 Commissioners noted the report, including the update on the secure training centre.

6.2 Commissioners agreed to renew the lease of the Manchester office. They suggested, when reviewing the estates strategy, to consider the office space required to support hybrid working and potential budget constraints. The Executive confirmed that office attendance is being actively monitored and that the estates strategy will look at office design.

Action: Governance team to schedule estates strategy for a future Board meeting, and to add office attendance update to a future CEO report.

6.3 Commissioners noted concerns about compliance with the Public Sector Equality Duty (PSED) by local authorities in England. The Executive provided reassurance that monitoring is underway, and an update will be provided to Commissioners in the autumn. Commissioners suggested that inclusion of accountability on PSED is included in the letters the Commission send to newly appointed ministers.

Action: Private Office to liaise with the Parliamentary team on updating letters to newly appointed ministers.

Action: Governance team to add PSED monitoring pilot update to a future CEO report.

6.4 The Chief Executive updated Commissioners on the Online Safety Bill. One Commissioner advised that the delay to the Bill may provide an opportunity for the Commission to make a more substantive intervention.

Action: Governance team to schedule Online Safety Bill for appropriate Board meeting.

6.5 Commissioners noted the update on the social care inquiry. The Scotland Commissioner noted that the inquiry was not conducted in Scotland because the Commission did not receive the consent of the Scottish Human Rights Commission. She advised this is a missed opportunity, and suggested making this clear in the report. The Chairwoman agreed and requested that reports about work that does not cover all parts of Britain should explain why this is the case and include, if appropriate, recommendations for the other nations.

Action: Director of Regulation to ensure the social care inquiry report includes recommendations on carrying out work in Scotland.

Action: Executive to cascade to teams that, where work does not cover Britain, the report should explain why this is the case and include, if appropriate, recommendations for the other nations.

6.6 Commissioners noted the analysis of the UK Government's 'Inclusive Britain' report. They discussed race and ethnicity terminology, and how language and definitions can differ between England, Scotland and Wales. One Commissioner, reflecting on the race roundtable, advised that the Commission should take the lead in focussing on outcomes, data, and effective actions.

6.7 The Scotland Commissioner advised that she will raise these points at her meeting with the Co-Chairs of the Scottish Government's Race Interim Governance Group. The Chairwoman suggested the Scotland and Wales Commissioners discuss terminology about race inequalities with the Scotland and Wales Committees respectively.

6.8 The Chairwoman updated Commissioners on her meetings with Steph's Place and the Oxford Centre for Islamic Studies. She advised that the Centre considered the Commission's intervention in the Forstater case profound, and they wanted to impress upon us that freedom of expression defends them as much as those who are not religious.

7. Approach to the Human Rights Tracker (EHRC 105.04 & 105.04a)

7.1 The Board agreed to publish a light-touch update to the Human Rights Tracker on Human Rights Day in December 2022 using the current methodology. They agreed to alert stakeholders in December to future methodological changes and to explain why it does not cover Scotland. They agreed to move to a new format in 2023, which they advised should be clearer, more accessible, demonstrate a better use of evidence, and align with the Commission's new data and evidence strategy.

Action: Governance team to schedule proposed changes to the Human Rights Tracker at a future Board meeting.

7.2 Commissioners made the following observations and suggestions:

a) to consider whether to move to a simplified progress status system;
b) to consider resource, stakeholder engagement and risks within the context of the Commission's wider transformation programme;
c) to review how we monitor human rights in Scotland in reserved areas within our statutory remit, which the Tracker does not cover.

8. Developing our data and evidence strategy and our statutory report to Parliament (EHRC 105.05 & EHRC 105.05a)

8.1 The Board noted the progress update on the Commission's next statutory report to Parliament. The Board agreed to change the report's name to 'The Equality and Human Rights Barometer', and for the 2023 report in Wales to

have a subtitle that includes ‘Is Wales Fairer?’. The Board welcomed the outline and evidence data strategy and supported its scope and ambition.

Action: Director of Strategy to liaise with the Wales Commissioner on an appropriate subtitle for the ‘The Equality and Human Rights Barometer’ in Wales.

8.2 The Wales Commissioner advised that ‘Is Wales Fairer?’ has good traction in Wales. She advised that the report is used by Welsh public bodies and Government to set equality objectives. She also advised that structuring the report by protected characteristics, rather than domains, may lead to an emphasis on equality more than on human rights, with less coverage of intersectionality; and that equality objectives may be confined to workplace objectives rather than expanding into other sectors. The Scotland Commissioner advised that in Scotland research has been undertaken and ‘Is Scotland Fairer?’ did not work.

8.3 The Chairwoman offered to write a note to the Wales Commissioner, for sharing with the Committee, to explain the rationale for the changes to the statutory report and to confirm that it will still be a state of the nation report.

Action: Private Office to draft a letter for the Chairwoman to send the Wales Commissioner about the changes to the Commission’s statutory report.

8.4 The Chair of the ‘Is Britain Fairer?’ Commissioner Working Group suggested changing the title of the Group to ‘Evidence and Data’ so that the Group has a broader purpose. The Chairwoman noted the request and advised a separate discussion would be required.

Action: Chief Policy and Strategy Officer to consider the name of the ‘Is Britain Fairer?’ Commissioner Working Group and provide advice.

8.5 Commissioners made the following suggestions in relation to the data and evidence strategy:

a) to consider identifying all the areas where there is inadequate data and use this to highlight the need for improved data collection to the Cabinet Office;
b) to consider how to use insights from data sources that may not be wholly robust or reliable, such as lived experience, within methodological standards.

9. Strategic priorities discussion 3:

9.1 Strategic priority: Addressing the equality and human rights impact of digital services and artificial intelligence (EHRC 105.06 & 104.06a)

9.1.1 Commissioners welcomed the paper, and made the following observations and suggestions:

a) to review the description of workstream 1, as bullying and abuse are not legally defined and broaden an already wide scope;
b) to consider focussing on where we can add value, and how we can work with other interested parties;
c) to consider directly engaging providers and social media companies to raise our profile and highlight our expertise;
d) to note the Online Safety Bill is the Commission's most critical opportunity to raise our profile;
e) to consider messaging and actions to tackle digital exclusion, such as encouraging what best practice looks like for digital accessibility;
f) to ensure we are not seeking higher protections for online and remote work than face to face employment.

9.2 Strategic priority: Fostering good relations and promoting respect between groups (EHRC 105.07 & 105.07a)

9.2.1 The Board welcomed the paper, and made the following observations and suggestions:

a) to consider areas to broaden the programme's focus, such as by identifying other divisive equality issues where intervention may be needed, including the protected characteristics of age and religion as well as sex, race and gender reassignment;
b) to note the importance of communications and take a more agile approach
c) to prepare reactive content on recurring or 'hot' issues in order to intervene in a timely way to state our position;
d) to take a data-led approach to understand and clarify misconceptions in public debates;
e) to note that changing attitudes is fundamental to creating meaningful change.

Action: Communications team to develop a matrix of reactive content on recurring and key issues.

10. Board Effectiveness Review and Governance Update (EHRC 105.08 & 105.08a)

10.1 Commissioners approved the recommendations in the Board Effectiveness Review report subject to their feedback. They endorsed the governance improvement work, including in relation to the Scotland and Wales Committees; and they endorsed the schedule for Board meetings up to May 2024 subject to removing the meeting in July 2023.

10.2 Commissioners made comments relating to: the Commission's Governance manual; the Chief Executive and Commissioner appraisal processes; a formal skills matrix to support the Public Appointments of Commissioners; the Board's relationship with the Scotland and Wales Committees; the frequency and location of Board, Committee and Commissioner Working Group meetings; governance costs; the quality of Board papers; and the quality and

timeliness of Board minutes.

Action: Governance team to develop the Board Effectiveness improvement plan; and to schedule the improvement plan, Governance manual, and Scotland and Wales Committee Terms of Reference for the October Board meeting.

Action: Governance team to update the Board meeting schedule and circulate to Commissioners to start canvasing for dates.

10.3 Commissioners suggested including outputs from the Board Effectiveness Review in the Commission's Annual Report for 2022-23.

Action: Finance team to plan a section on the Board Effectiveness Review in the Commission's Annual Report 2022-23.

11. Wales Committee recruitment (EHRC 105.09)

11.1 The Board approved the appointments for three Wales Committee candidates and their proposed start dates; they approved the 18-month extension for Martyn Jones; they agreed that a recruitment process should be conducted when vacancies arise on the Wales and Scotland Committees and that this should be informed by a skills matrix of current members.

Action: Governance team to process Wales Committee appointments as agreed.

12. Strengthening the Commission's powers and independence (EHRC 105.10)

12.1 The Board approved proposals to strengthen our regulatory powers in two areas through secondary legislation, with an appropriate risk analysis for Scotland and Wales, and that the Chairwoman would write to the Secretary of State formally to request these powers, as well as to argue that our independence would be strengthened by giving the Commission a separate Supply Estimate.

Action: Director of Strategy to draft a letter for the Chairwoman to send the Secretary of State arguing for strengthened regulatory powers.

Action: Executive team to liaise with the Scotland and Wales Commissioners to schedule Committee discussions on the Commission's powers and independence.

12.2 The Board agreed to discuss in the autumn proposals to enhance our regulatory powers through primary legislation; they agreed to review in 2023 increasing the Commission's financial autonomy by income generation.

Action: Governance team to schedule a discussion on the Equality Act and the interface with the Gender Recognition Act at a Board meeting in the autumn.

Action: Governance team to schedule a development session on income generation in 2023.

13. AOB

13.1 The Board agreed that the Chief Executive should write a preliminary letter to a Hospital Trust regarding the comparator used in a gender reassignment discrimination case.

Action: Chief Executive to write to the hospital Trust concerned.

13.2 The Board agreed to have a face-to-face Board meeting on 14 September in London. They noted there will be a two-day, in-person Board meeting on 18 and 19 October in Manchester, and an online meeting on 23 November. The Chairwoman advised that online Board meetings will not be 6 hours long in future.

13.3 The Board noted the Forward Schedule and minutes of the P&WC and Scotland Committee meetings.